

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

FERNANDO RODRIGUEZ

PLAINTIFF

v.

Civil No. 05-5061

CAPTAIN HUNTER PETRAY;
and SGT. WISEMAN

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Fernando Rodriguez filed this pro se civil rights action pursuant to 42 U.S.C. § 1983 on April 12, 2005. His complaint was filed in forma pauperis (IFP).

On November 8, 2005, the undersigned entered an order (Doc. 35) granting the defendants' motion to compel. Rodriguez was directed to provide the defendants with discovery responses by November 30, 2005. On December 5, 2005, defendants filed a motion to dismiss (Doc. 37). In the motion, defendants state they have not received the discovery responses from the plaintiff.

Additionally, on November 3, 2005, the defendants filed a motion for summary judgment (Doc. 30). On November 9, 2005, the undersigned entered an order (Doc. 36) directing plaintiff to complete, sign, and return an attached response to the summary judgment motion. The response was to be filed by December 12, 2005.

To date, Rodriguez has failed to provide defendants with the discovery responses. Rodriguez has also failed to respond to the court's summary judgment questionnaire. Rodriguez has not requested an extension of time to perform either act and has not advised the court of any change in his address. No mail has been returned to the court as undeliverable.

I therefore recommend that the defendants' motion to dismiss be granted. This case should be dismissed based on Rodriguez's failure to comply with the order of the court and his failure to prosecute this action. *See Fed. R. Civ. P. 41(b).*

The parties have ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 29th day of December 2005.

/s/ Beverly Stites Jones
UNITED STATES MAGISTRATE JUDGE